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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

KAWASAKI RAIL CAR, INC.,

Petitioner,

Case IPR2017-01036

v.

SCOTT BLAIR,

Patent Owner.

Video-recorded Deposition Upon Oral Examination of:
JOSEPH B. ZICHERMAN

Location: Meredith & Keyhani
205 Main Street
East Aurora, New York 14052

Date: April 13, 2018

Time: 9:22 a.m.

Reported By: MICHELLE MUNDT ROCHA

Page 2

1 A P P E A R A N C E S

2 Appearing on Behalf of Petitioner:

3 Zaed M. Billah, Esq.

4 Hunton Andrews Kurth LLP

5 One Broadway

6 New York, New York 10004

7 zbillah@HuntonAK.com

8

9 Appearing on Behalf of Patent Owner:

10 Jennifer Meredith, Esq.

11 Meredith & Keyhani

12 205 Main Street

13 East Aurora, New York 14052

14 jmeredith@meredithkeyhani.com

15

16 Appearing as the Videographer:

17 Ken Williamson

18

19

20

21

22

23

24

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1 P R O C E E D I N G S

2 FRIDAY, APRIL 13, 2018;

3 (Proceedings in the above-titled matter

4 commencing at 9:22 a.m.)

5 * * *

6 THE VIDEOGRAPHER: We are on the record.

7 The time is approximately 9:22 a.m. Today is Friday,

8 April 13, 2018.

9 Please note that the microphones are

10 sensitive and may pick up whispering, private

11 conversations and cellular interference. Please turn

12 off your cell phones. Audio and video recording will

13 continue to take place unless all parties agree to go

14 off the record.

15 This is media unit one of the

16 video-recorded deposition of Joseph B. Zicherman,

17 taken by the counsel for the petitioner in the matter

18 of Kawasaki Railcar, Inc., Petitioner versus Scott

19 Blair, Patent Owner. The case is filed in the United

20 States Patent and Trademark Office before the Patent

21 Trial and Appeal Board, IPR2017-01036. The deposition

22 is being held at 205 East Main Street, East Aurora,

23 New York.

24 I am Ken Williamson, the videographer for

25 Veritext. I am not administered -- or authorized to

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH

2 administer the oath, nor am I related to any party in

3 this action, nor am I financially interested in the

4 outcome.

5 Counsel are present in the room, and

6 everyone attending will now place their appearances

7 and affiliations for the record. If there are any

8 objections to the proceeding, please state them at the

9 time of your appearance.

10 MR. BILLAH: Zaed Billah from Hunton,

11 Andrews, Kurth representing Petitioner, Kawasaki

12 Railcar, Inc.

13 MS. MEREDITH: Jennifer Meredith,

14 Meredith & Keyhani, representing the Patent Owner,

15 Scott Blair.

16 THE VIDEOGRAPHER: Please swear in our

17 witness.

18 JOSEPH B. ZICHERMAN,

19 called herein as a witness, first being sworn,

20 testified as follows:

21 EXAMINATION BY MR. BILLAH:

22 Q. Can you please state your name and

23 residential address for the record?

24 A. Joseph B. Zicherman. 2390 Eunice Street,

25 Berkeley, California.

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH

2 Q. Who is your current employer?

3 A. Berkeley Engineering and Research.

4 Q. And what city is that located in?

5 A. Berkeley, California.

6 Q. And what is your current title?

7 A. Senior fire safety consultant.

8 Q. And how long have you had that title?

9 A. I've worked with Berkeley Engineering and

10 Research for about two years now.

11 Q. And at your time at Berkeley Engineering

12 and Research your title has always remained the same?

13 A. Yes.

14 Q. Dr. Zicherman, you were deposed a few

15 weeks ago, so I'm sure you're familiar with the

16 process, but I'll just go over a few ground rules.

17 Most important thing we'll try to do is

18 not talk over each other. It's very difficult for the

19 court reporter to transcribe two people at once.

20 I also ask that you try to answer in words

21 rather than a shrug of the shoulders or head nods,

22 that kind of thing.

23 A. Yes.

24 Q. Your counsel, Ms. Meredith here, may

25 object to some of the questions; but unless she

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 specifically instructs you not to answer a question,
3 you still need to answer the question. Do you
4 understand that?
5 A. Yes.
6 Q. If you need a break -- we'll take breaks
7 throughout the day, but if you need a break at any
8 time, feel free to ask for one, and we'll take one. I
9 just ask that if there's a question pending, that you
10 answer the question first, and then we can take a
11 break.
12 Is there any reason you cannot testify
13 truthfully today?
14 A. No.
15 Q. Are you on any medication that would
16 affect your ability to answer questions?
17 A. No.
18 Q. How did you prepare for today's
19 deposition?
20 A. I reviewed my declaration, I reviewed my
21 deposition of February 28th, and I reviewed some of
22 the relevant documents in the case in my file.
23 Q. And what documents were those?
24 A. Those were the patents cited as
25 references.

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 Q. Do you remember the names?
3 A. I don't. I can give you the names.
4 Q. Based on what you have in front of you?
5 A. Based on my supplemental declaration.
6 Q. What documents do you have in front of
7 you?
8 A. I have my deposition of February 28th and
9 my supplemental declaration.
10 Q. And in any of the papers you have with you
11 today, are there any notations on those documents?
12 A. No.
13 Q. Can I look at that, please?
14 A. Sure.
15 Q. Did you speak to your counsel in
16 preparation for this deposition?
17 A. I did.
18 Q. And when was that?
19 A. I spoke with Ms. Meredith on Wednesday in
20 a phone conversation, and I met with she and her
21 partner last evening.
22 Q. And her partner being Mr. Keyhani?
23 A. Correct.
24 Q. Approximately how much time did you spend
25 speaking with Ms. Meredith and Mr. Keyhani for this

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 deposition?
3 A. Yesterday evening probably an hour.
4 Q. Did you talk to Mr. Long in preparation
5 for today's deposition?
6 A. No.
7 Q. Have you ever spoken to Mr. Long?
8 A. No.
9 Q. Have you ever had any communications with
10 Mr. Long?
11 A. No.
12 Q. Is there anybody else you spoke to to
13 prepare for this deposition?
14 A. No.
15 (The following exhibits were marked for
16 identification: EXH Numbers 1, 2 and 3.)
17 MR. BILLAH: For the record, Exhibit 1 is
18 a copy of United States Patent Number 6,700,602, also
19 marked as Kawasaki 1001.
20 Exhibit 2 is the Supplemental Expert
21 Declaration of Jack R. Long, also marked as Exhibit
22 2006 in IPR2017-01306.
23 Exhibit 3 is the Supplemental Expert
24 Declaration of Joseph B. Zicherman, also marked as
25 Exhibit 2009 in IPR2017-01036.

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 Q. Dr. Zicherman, could you please look at
3 Exhibit 2, please? What is this document?
4 A. This is -- Exhibit 2 is a Supplemental
5 Expert Declaration of Jack R. Long.
6 Q. Have you ever seen this document?
7 A. I have.
8 Q. When is the last time you've seen this
9 document?
10 A. I saw this document roughly a week ago for
11 the first time.
12 Q. And is there a particular reason you
13 reviewed this document a week ago?
14 A. I was provided with this document by my
15 clients, and they asked me to review it.
16 Q. And is it correct that you reviewed
17 Exhibit 2 in preparation to draft your own
18 declaration, which is Exhibit 3?
19 A. Yes.
20 Q. And looking at Exhibit 3 side by side with
21 Exhibit 2, what is the relationship between Exhibit 2
22 and Exhibit 3?
23 A. Exhibit -- I'm sorry. Did I cut you off?
24 Q. No.
25 A. Exhibit 3 is a copy of my own declaration,

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 which was prepared after reviewing Mr. Long's
3 deposition. And as I understand it, the circumstances
4 are that Mr. Long has been quite ill and unable to
5 participate.
6 And in as much as I testified in my last
7 deposition in detail about design issues, I was asked
8 to look at Mr. Long's opinions and see if they were
9 consistent with my own; and indeed they were, by and
10 large.
11 Q. And when you say "by and large," what
12 about Mr. Long's opinions and your opinions is not
13 consistent?
14 A. Well, he has some information about how
15 subways are tunneled and so on, which I didn't feel
16 were particularly relevant to a declaration with my
17 signature.
18 Q. And can you point out the sections you're
19 referring to in Mr. Long's declaration?
20 A. In Long they are sections 8 and 9.
21 Q. And I just want to seek a clarification in
22 your testimony. You said (as read): Exhibit 3 is a
23 copy of my own declaration, which was prepared after
24 reviewing Mr. Long's deposition.
25 When you said "Mr. Long's deposition," did

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 you mean declaration?
3 A. I did. I misspoke.
4 Q. Did you ever review Mr. Long's deposition?
5 A. No.
6 Q. The removal of sections 8 and 9 in making
7 your declaration in comparison to Mr. Long's
8 declaration, did that have anything to do with your
9 lack of expertise in any particular area?
10 A. No.
11 Q. Can you please turn to paragraph 14 in
12 your declaration, Exhibit 3?
13 A. Paragraph 14, page 4?
14 Q. Correct.
15 A. Yes.
16 Q. The second sentence of paragraph 14 says
17 (as read): The problem posed to the inventor at the
18 time of the invention was particularly challenging, as
19 subway cars have challenges that do not exist in
20 residential environments or even buses or Amtrak
21 trains.
22 Do you see that?
23 A. Yes.
24 Q. The word "problem," the second word in the
25 sentence there, what problem -- what is the problem?

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 A. The problem refers to the installation of
3 information monitors in a subway car.
4 Q. And what are the problems with the
5 installation of information monitors in a subway car?
6 A. At the time that this patent was written,
7 monitors were of larger size, they were electrically
8 powered and created a potential fire hazard. They
9 prevent -- excuse me. They presented a potential
10 source of injury to passengers if they projected out
11 into a railcar. Those were the primary problems.
12 And another problem which had not been
13 addressed was the simple and -- actually, not simple,
14 but the problem of mounting the monitor itself within
15 the confines or the -- of the actual car shell.
16 Q. And your testimony says that the problem
17 posed to the inventor. So was the fire hazard problem
18 posed to the inventor?
19 A. That was an engineering problem that the
20 inventor would have to deal with, yes.
21 Q. How was it posed to the inventor?
22 A. How was it posed to the inventor? Can you
23 clarify that?
24 Q. Did a person pose that problem to the
25 inventor?

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 A. Well, there was a regulatory issue, and
3 there was an overarching issue of fire safety. And
4 these are electrical devices, and they have a
5 potential to fail. And if they were to fail and
6 initiate a fire, smoke and heat and toxic gas and
7 particulates would put subway riders at risk.
8 Q. And what regulatory body are you referring
9 to?
10 A. Well, the regulatory body in question was
11 actually the Federal Transit Agency, but the Federal
12 Transit Agency basically defaulted to the activities
13 of the Federal Railway Administration, who had
14 prepared a series of fire safety guidelines that are
15 codified in CFR-238.
16 Q. How do you know what the inventor was
17 considering at the time of his invention for this
18 patent?
19 A. How do I know? I guess I can't -- it
20 seems obscure.
21 Q. You're saying the problem was posed to the
22 inventor. There's nothing in the patent about fire
23 hazards, is there?
24 A. There's nothing per se.
25 Q. So how do you know the inventor had any

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 considerations for fire hazards?
3 A. Because the inventor either knew or should
4 have known that there were fire hazards or that
5 there's a risk of fire on a rail vehicle. And if a
6 rail vehicle operates underground, the hazard
7 resulting from that risk is greater than if it's
8 operating above ground.
9 Q. Now, you don't know what the inventor
10 knew; is that correct?
11 MS. MEREDITH: Objection.
12 A. Yeah, I don't know what the inventor knew.
13 Q. Is there anything in this patent that
14 discusses injury to passengers, the patent being
15 Exhibit 1?
16 A. Give me a minute to review it?
17 Q. Yes.
18 MS. MEREDITH: Objection. The document
19 speaks for itself.
20 A. I'm not sure that safety or fire are
21 discussed in the patent.
22 Q. When you say, "I'm not sure," does that
23 mean you haven't read the whole patent?
24 A. I haven't focused on whether or not that
25 was in the patent in my readings of the patent.

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 Q. Can you -- if you're not sure, what would
3 make you sure?
4 A. Taking longer and looking at it some more.
5 Q. I would like an answer to my question,
6 sir. Is there anything in the patent that discusses
7 injury to passengers?
8 A. Okay.
9 MS. MEREDITH: Objection again.
10 (There was a pause in the proceeding.)
11 A. I don't believe it discusses fire or fire
12 danger.
13 Q. Or injury to passengers; correct?
14 A. Or injury to passengers, with the
15 exception that it talks about the monitors being
16 strongly mounted, which would at least acknowledge
17 that they need to be strongly mounted.
18 Q. Can you please take a look at the patent,
19 '602 patent, column 3?
20 A. Okay.
21 Q. Column 3, line 55, it reads (as read): A
22 subway car is normally constructed so that it has a
23 cavity wall defined between its outer structural shell
24 and an inner lining wall; the cavity providing for
25 wiring and cables and other mechanical functions and

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 at places containing insulation.
3 Do you see that?
4 A. Yes.
5 Q. My question to you is in the 1995 to 1997
6 time frame a subway car was normally constructed such
7 that it had a cavity in between its interior wall and
8 its exterior shell; correct?
9 A. Yes.
10 Q. Do any subway systems of today not have
11 that cavity space?
12 A. I can't speak for all such vehicles. Most
13 do have such a space.
14 Q. And have you ever seen a subway car
15 without such a space?
16 A. Probably the older London underground cars
17 do not have such a space.
18 Q. And when you say, "London underground
19 cars," does that mean that those cars operate in
20 London, England?
21 A. Yes.
22 Q. And in what time frame are you referring
23 to with those London underground cars?
24 A. Operating or being built?
25 Q. Let's start with being built.

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1 JOSEPH B. ZICHERMAN - BY MR. BILLAH
2 A. Well, they're still operating, and they
3 probably -- they may well be current cars as well,
4 because those cars have a construction with a highly
5 curved roof to fit the very old tunnels that they run
6 in.
7 Q. Can you turn to column 4 of the patent,
8 please?
9 A. Yeah.
10 Q. Line -- down at line 57 of column 4 it
11 starts by saying (as read): A typical subway car 10,
12 as illustrated in Figures 1A and 1B.
13 Do you see that?
14 A. Yes.
15 Q. If you look at Figure 1A --
16 A. Yes.
17 Q. -- my question is do you agree that figure
18 1A depicts a typical subway car in the 1995 to 1997
19 time frame?
20 A. Well, 1A would certainly represent a plan
21 view of a typical car, or could.
22 Q. And can you turn to column 5?
23 A. Pardon? 5?
24 Q. Column 5, yes, sir.
25 A. Sure. I've got it.

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